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IN THE SUPERIOR COURT

OF THE STATE OF CALIFORNIA

People of California, (FR),

PLAINTIFF

_____,

DEFENDANT

No. _____.
NOTICE OF AND MOTION FOR POST CONVICTION DISCOVERY; MEMORANDUM; DECLARATION; PROOF OF SERVICE;

Date:___/___/_____ | Time:_____.
Loc:_____.
Dpt:_____. | Officer:_____.

[ ] - At Courts Notice

TO: Clerk of the Court; Judicial Officer Presiding;

TO: Parties of Interest

TAKE NOTICE that Defendant, as petitioner, hereby moves this Court for post-conviction discovery pursuant the California Penal Code section 1054.9.

This motion is made on the grounds that the requested discovery is necessary for both reconstruction of records lost and or not otherwise provided, and for the purposes of preparing a petition for extraordinary writ or relief, as intended, and in consideration of the contents of records now believed to be necessary for such preparation and pursuit of justice.

Petitioner requests the following:

All records existing and otherwise meeting the definition of records of discovery as outline by statue (Cal Pen § 1054.9), and those records to which the right of provision existed or would have existed at the time of trial.

All records of discovery including all arrest reports, booking and housing information, media, transcriptions, interviews, records and reports thereof or otherwise relevant to the action, it's investigation and the defendants prosecution. These to be provisioned appropriately. This includes delivery of data in a manner that allows review of the original source material, and certification that such media be a true copy.

The records requested are at all times known to exist and lay within the scope and definition of material outlined by statute (Cal Pen § 1054.9).

This motion is based upon this notice, the attached memorandum of points and authorities, the declaration of the petitioner, all pleadings and papers on file in this case, and such further evidence and argument as may be presented at the hearing.

Respectfully,

Sign: _____. Dated:

Print: _____.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Petitioner respectfully requests an order from this Court pursuant to California Penal Code, section § 1054.9 (Cal Pen § 1054.9), to compel discovery of materials that are reasonably believed to be in the possession of the district or agencies involved in the investigation and prosecution.

Penal Code § 1054.9(a) provides:

> "Upon the prosecution of a postconviction writ or motion, a defendant may request discovery materials in the possession of the prosecution and law enforcement authorities that were provided or should have been provided at trial."

This statutory right is grounded in the principles of due process and fundamental fairness. As established by the California Supreme Court, the right to such discovery is triggered when a petitioner demonstrates a reasonable basis to believe discoverable materials exist and are necessary for further legal proceedings (In re Steele, 32 Cal.4th 682, 694 (2004)).

II. LEGAL STANDARD

A petitioner is entitled to post-conviction discovery where (1) the petitioner is preparing or has filed a petition for writ of habeas corpus or other post-conviction relief, and (2) the discovery sought is "material to the claim at issue" and was in the possession of the prosecution or law enforcement at the time of trial (People v. Superior Court (Maury), 19 Cal.4th 535, 539 (1999); Cal Pen Code § 1054.9). The courts have clarified that the scope of such discovery includes materials that were reasonably accessible to the prosecution or investigative agencies (In re Steele, 32 Cal.4th at 696).

III. REQUEST FOR RELIEF

Petitioner seeks discovery as follows:

1. Reconstruction of records lost and or not otherwise provided, known to exist & within the scope and definition of material outlined by statute (Cal Pen § 1054.9).
2. Petitioner also seeks the records for the purpose of preparing a petition for extraordinary writ or relief, as intended, and in consideration of the contents thereof.

As held in In re Brown, 17 Cal.4th 873, 882 (1998), post-conviction access to evidence is vital where the material sought could demonstrate a miscarriage of justice or support a viable legal theory for relief.

IV. DILIGENT EFFORTS

Petitioner has exercised and pled his due diligence in attempting to obtain these items through former counsel and other means, but has been unsuccessful (Party Declaration Attached) As such, Petitioner seeks this Court's assistance to enforce discovery rights under law.

Respectfully,

_____.
Sign

_____.
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DECLARATION OF DEFENDANT AS PETITIONER

I undersigned, declare:

- I am the defendant in the above-captioned matter, appearing here as petitioner seeking post-conviction discovery orders.

- I am seeking to reconstruct the file in this matter, of which I do not presently have a full and complete copy.

- I believe the material items requested are necessary and intend to use such items in the preparation of a petition for writ or other post-conviction relief.

- I have exercised due diligence in my attempt to procure the items listed from counsel of record and other reasonable sources, have been unsuccessful thus far, and require assistance and order from this Court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____.
Sign

_____.
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